



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF A- CORP.

DATE: AUG. 16, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a provider of information technology solutions, sought to employ the Beneficiary as a senior programmer analyst. It requested his classification under the second-preference immigrant category as a member of the professions holding an advanced degree or its equivalent. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, “EB-2” category allows a U.S. business to sponsor a foreign national with a master’s degree, or a bachelor’s degree followed by five years of experience, for lawful permanent resident status.

After initially granting the filing, the Director of the Texas Service Center revoked the petition’s approval. The Director invalidated the accompanying certification from the U.S. Department of Labor, finding that the Petitioner misrepresented a material fact involving the certification. On appeal, we withdrew the Director’s decision and remanded the matter for consideration of other potential grounds of revocation.

After receiving the Petitioner’s response to a new notice of intent to revoke (NOIR), the Director again revoked the petition’s approval. The Director concluded that, in addition to misrepresenting material facts, the Petitioner did not establish the Beneficiary’s qualifications for the offered position. On appeal, we withdrew the misrepresentation finding, but affirmed the petition’s revocation based on unresolved evidentiary discrepancies regarding the Beneficiary’s claimed qualifying experience. *See Matter of A- Corp.*, ID# 696382 (AAO Dec. 15, 2017).

The matter is now before us on the Beneficiary’s motions to reopen and reconsider. The Beneficiary submits additional evidence and asserts that the passage of more than six years from the petition’s approval to the issuance of the second NOIR prevented the parties from completely responding to the revocation allegations. The Beneficiary also asserts that he may continue to use the priority date of the revoked petition for immigration purposes, or he and his family would suffer severe hardship.

Upon review, we will deny the motions.

The record lacks evidence of the Petitioner's consent to the filing of these motions.<sup>1</sup> The Beneficiary signed the Form I-290B, Notice of Appeal or Motion, and the accompanying Form G-28, Notice of Entry of Appearance, authorizing counsel to represent him.

Department of Homeland Security regulations do not allow beneficiaries to file motions. Rather, only an "affected party" may file a motion. 8 C.F.R. § 103.5(a)(1)(i). The term "affected party" means "the person or entity with legal standing in a proceeding. *It does not include the beneficiary of a visa petition.*" 8 C.F.R. § 103.3(a)(1)(iii)(B) (emphasis added).

Under a decision that U.S. Citizenship and Immigration Services (USCIS) adopted as policy, the Beneficiary asserts his standing in these proceedings. *See Matter of V-S-G- Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2017). In *V-S-G-*, we interpreted the regulations to treat beneficiaries as affected parties in petition revocation proceedings if they qualify for "portability." Under the portability provision, approved petitions remain valid even after eligible beneficiaries change jobs or employers. Section 204(j) of the Act, 8 U.S.C. § 1154(j). A beneficiary of a valid petition, whose application for adjustment of status remains pending for at least 180 days, may "port" the petition to a new job if that position is in the same or similar occupational classification as the job offered in the petition. *Id.* Thus, even though a petitioner and beneficiary no longer intend to enter into a permanent employment relationship, a petition may remain valid for purposes of the beneficiary's adjustment of status.

In *V-S-G-*, we held that portability-eligible beneficiaries may participate in revocation proceedings if they have qualifying new job offers of which USCIS received notice. *Matter of V-S-G-*, Adopted Decision 2017-06 at \*10 (emphasizing a qualifying beneficiary's need to properly request portability by informing USCIS of the details of a new job offer). USCIS published the adopted decision before the Beneficiary's filing of these motions. The Beneficiary, however, neither claims nor establishes that he properly requested to port under Section 204(j) of the Act and *V-S-G-*. The Beneficiary therefore lacks standing in these proceedings.

Because the Beneficiary has not established standing, his motions do not meet applicable requirements and must be denied. 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of A- Corp.*, ID# 1567465 (AAO Aug. 16, 2018)

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<sup>1</sup> The Beneficiary asserts that the petitioning corporation dissolved and ceased operations. A search of online public records as of June 26, 2018, did not confirm the Beneficiary's assertion.